

UNITED STATES OF AMERICA
UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

JEFFERY REYNOLDS,)	
)	
Plaintiff,)	Case No. 1:10-cv-738
)	
v.)	Honorable Paul L. Maloney
)	
COMMISSIONER OF)	
SOCIAL SECURITY,)	
)	<u>REPORT AND RECOMMENDATION</u>
Defendant.)	
)	

This was a social security action brought under 42 U.S.C. §§ 405(g) and 1383(c)(3), seeking review of a final decision of the Commissioner of Social Security denying plaintiff's claims for disability insurance benefits (DIB) and supplemental security income (SSI) benefits. On December 7, 2010, the court entered a judgment vacating Commissioner's decision and remanding the matter to the Commissioner under sentence four of 42 U.S.C. § 405(g) for further administrative proceedings.

On January 31, 2011, the parties filed a two-paragraph stipulated motion¹ asking the court to award plaintiff \$1,773.86 in attorney's fees pursuant to the Equal Access to Justice Act (EAJA), 28 U.S.C. § 2412. (docket # 12). Upon review, I recommend that the plaintiff's premature and unsupported motion for EAJA attorney's fees be denied without prejudice.

¹Only a prevailing party can seek attorney's fees under the EAJA. 28 U.S.C. § 2412(d)(1)(A). Thus, the stipulation is construed as a motion, made by plaintiff's attorney on behalf of his client, which defendant does not oppose.

Discussion

Plaintiff's application for fees under the EAJA is premature. The judgment remanding this matter to the Commissioner does not become a "final judgment" within the meaning of the EAJA until February 7, 2011, when the government's sixty-day period within which to appeal the judgment expires. *See Melkonyan v. Sullivan*, 501 U.S. 89, 102 (1991); *Marshall v. Commissioner*, 444 F.3d 837, 842 n. 3 (6th Cir. 2006). The application was therefore not filed "within thirty days of final judgment" as required by statute. 28 U.S.C. § 2412(d)(1)(B); *see Townsend v. Commissioner*, 415 F.3d 578, 581 (6th Cir. 2005).

Plaintiff's motion requests an award of \$1,773.86 in "EAJA fees and expenses." (docket # 12 ¶ 1). The United States Court of Appeals for the Sixth Circuit has cautioned lower courts against "rubber stamping" EAJA fee applications. *See Begley v. Secretary of Health & Human Servs.*, 966 F.2d 196, 200 (6th Cir. 1992). The EAJA requires "an itemized statement from [the] attorney . . . representing or appearing in behalf of the party stating the actual time expended and the rate at which fees and other expenses were computed." 28 U.S.C. § 2412(d)(1)(B). A stipulated amount does not suffice.

The remaining paragraph of plaintiff's motion states as follows:

After the court enters this award, if counsel and the parties can verify that Plaintiff owes no pre-existing debt subject to offset, the Defendant agrees to direct that the award be made payable to Plaintiff's attorney pursuant to the EAJA assignment duly signed by Plaintiff.

(docket # 12 ¶ 2). The EAJA provides in pertinent part that the court shall award fees "to a prevailing party." 28 U.S.C. § 2412(d)(1)(A). Thus, any judgment entered for EAJA attorney's fees

must be entered in plaintiff's favor. It is clear that the statute cannot be circumvented by the simple expedient of a stipulation. *See Astrue v. Ratliff*, 130 S. Ct. 2521 (2010).

Any agreements entered into by the parties are not part of this closed case and cannot be appended to it. There is a significant potential for conflict among plaintiff, his creditors, and his attorney with regard to the EAJA fees. "The EAJA does not legally obligate the Government to pay a prevailing litigant's attorney, and the litigant's obligation to pay [his] attorney is controlled not by the EAJA but by contract and the law governing that contract." *Astrue v. Ratliff*, 130 S. Ct. at 2530 (Sotomayor, J. concurring). Plaintiff's contractual obligations to his attorney are not part of this case.

Recommended Disposition

For the reasons set forth herein, I recommend that the plaintiff's premature and unsupported motion for attorney's fees under the EAJA (docket # 12) be denied without prejudice.

Dated: February 3, 2011

/s/ Joseph G. Scoville
United States Magistrate Judge

NOTICE TO PARTIES

Any objections to this Report and Recommendation must be filed and served within fourteen days of service of this notice on you. 28 U.S.C. § 636(b)(1)(C); FED. R. CIV. P. 72(b). All objections and responses to objections are governed by W.D. MICH. LCIVR 72.3(b). Failure to file timely and specific objections may constitute a waiver of any further right of appeal. *See Thomas v. Arn*, 474 U.S. 140 (1985); *United States v. Branch*, 537 F.3d 582, 587 (6th Cir.), *cert. denied*, 129 S. Ct. 752 (2008); *Frontier Ins. Co. v. Blaty*, 454 F.3d 590, 596-97 (6th Cir. 2006). General objections do not suffice. *Spencer v. Bouchard*, 449 F.3d 721, 724-25 (6th Cir. 2006); *see Frontier*, 454 F.3d at 596-97; *McClanahan v. Comm'r of Social Security*, 474 F.3d 830, 837 (6th Cir. 2006).